

**Testimony of Margaret Seminario, Safety and Health Director, American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) before the House of Representatives, Committee on Energy and Commerce, Subcommittee on Health on the James Zadroga 9/11 Health and Compensation Act of 2008 (H.R. 6594)**

**July 31, 2008**

Chairman Pallone, Ranking Member Deal and members of the committee, I appreciate the opportunity to testify today to express the AFL-CIO's strong support for the James Zadroga 9/11 Health and Compensation Act of 2008 (H.R. 6594). This legislation will provide much needed and long overdue help to the thousands of brave responders, recovery and clean-up workers and residents who are now sick as a result of exposures to toxins and other hazards that resulted from the attacks on the World Trade Center in 2001.

Nearly seven years ago, the September 11, 2001, terrorist attacks claimed the lives of 3,000 individuals, injured thousands more and brought unparalleled grief and anguish to the nation. But soon after the 9/11 attacks it became clear that those who died and were injured on that day were not the only victims. Tens of thousands rescue and recovery workers – including firefighters, police, emergency medical technicians, workers in the building and construction trades, transit workers and others – and hundreds of thousands of other workers and residents near Ground Zero were exposed to a toxic mix of dust and fumes from the collapse of the World Trade Center. The scale and scope of these exposures was massive and extraordinary, with tons of glass, pulverized concrete, asbestos, lead and burning jet fuel forming a dust and smoke cloud that engulfed the WTC site and lower Manhattan and spread throughout the area. The exposures continued for months as the fires at the WTC burned, rescue, recovery and clean-up operations ensued and toxic dust contaminated the area. The exposures were made much worse by EPA's pronouncements that the environment was safe and OSHA's failure to enforce workplace safety

and health requirements during the entire 10-month period of rescue, recovery and clean-up operations at the WTC site.

As this committee heard at a hearing last September, the exposures resulting from the attacks on the World Trade Center and its aftermath have caused significant and widespread health problems among rescue, recovery and clean-up workers, residents and others who were exposed. Peer reviewed studies by the New York City Fire Department (FDNY) show that 90 percent of FDNY rescue workers suffered new respiratory problems, experiencing an average loss of 12 years of lung capacity. A study of Ground Zero responders, recovery and clean-up workers conducted by the Mount Sinai Medical Center found that 69 percent had new or worsened upper or lower respiratory symptoms and one-third had abnormal pulmonary function tests. Similar findings have been reported by researchers from the Penn State University College of Medicine and Johns Hopkins in studies of police and other recovery and clean-up workers. These and other studies have also documented a high incidence of gastrointestinal and mental health problems.

While those who responded on September 11 and the days that followed had the highest exposures, other groups of workers and residents were exposed to the toxic dusts and also suffer similar health problems. A study of clean-up workers conducted by researchers from the Johns Hopkins University found that workers who started working at the WTC site after January 2002 also experienced significant respiratory health problems. And studies and surveys of residents and area workers conducted by the New York City Department of Health World Trade Center Registry have found similar patterns of reported respiratory and mental health problems in these populations.

Despite the fact that serious health problems among World Trade Center responders have been documented and recognized for several years, it has been a struggle to get these brave workers and others affected the help and the care they need. Since September 11, 2001, the Bush Administration has failed to provide leadership or take action. The administration has opposed reprogramming already appropriated funds for medical treatment, and dragged its feet on funding and establishing monitoring and treatment programs for responders outside the NY area, for federal workers, and for residents and area workers. Repeatedly, the administration has failed to request the level of funding needed to support these programs. And most recently, the administration failed to reappoint Dr. John Howard as Director of NIOSH, also terminating his appointment as Director of the World Trade Center Health Program, despite widespread universal support from labor, industry, and the occupational health community and bipartisan support from members of Congress.

Largely at the initiative of Congress, in 2002, a federally funded screening program for firefighters, police, rescue and clean-up workers was established which identified serious health problems among these workers. This screening program was conducted by the FDNY and a consortium of medical centers with expertise in occupational health coordinated by the Mt. Sinai Medical Center. In 2004 this program was expanded to provide more comprehensive medical monitoring, which confirmed significant respiratory and gastrointestinal problems as a result of exposure to the toxic dust and fumes. But the workers' compensation claims of many workers who were sick and disabled were contested by the city of New York and private contractors, leaving them nowhere to turn for medical treatment. Due to their health conditions, many of these sick responders are unable to work and have lost their health insurance. And even for those who have insurance, health insurance policies generally do not cover work-related conditions

since they are supposed to be covered by workers' compensation. None of these insurance policies provide coverage for ongoing medical monitoring for individuals who have been exposed and are at risk of developing disease.

In FY 2006, through the efforts of the New York delegation and the unions, the Congress appropriated \$75 million to further support these programs and to provide medical treatment to workers sick as a result from their exposures from the World Trade Center attacks and its aftermath. This medical treatment was provided through the same medical centers that had conducted the earlier screening and monitoring and had first identified and documented the health problems in responders, recovery and clean-up workers. In FY 2007, \$50 million for medical treatment was included in a supplemental spending measure, and in FY 2008 a total of \$158 million was appropriated. The National Institute for Occupational Safety and Health (NIOSH) has coordinated and overseen these monitoring and treatment initiatives through the WTC Medical Monitoring and Treatment Program, which until recently was headed by NIOSH Director Dr. John Howard.

In 2006, the city of New York announced and established the WTC Environmental Health Center at Bellevue Hospital to provide medical treatment to residents, clean-up workers and area workers who were not covered by the federally funded treatment programs. In the FY 2008 Consolidated Appropriations Act, Congress designated that some of the appropriated funds should be used to fund medical treatment for residents, students and area workers with World Trade Center Health problems. But HHS has yet to distribute these funds for this purpose.

As of December 2007, 39,368 responders had received at least one examination in the FDNY or Mt. Sinai consortium programs, according to the April 2008 Department of Human

Services “Report to Congress: Providing Monitoring and Treatment Services for those Experiencing Injuries or Illnesses as a Result of the World Trade Center Exposures.” The FDNY conducted 14,620 of these initial exams and the Mt. Sinai consortium conducted 22,748 initial exams. HHS reports that of among the responders and recovery workers examined, 9,744 received medical treatment for a combination of respiratory and gastrointestinal conditions such as asthma, interstitial lung disease, chronic cough, and gastroesophageal reflux disease (GERD), and 5,674 received treatment for mental health conditions such as post-traumatic stress disorder (PTSD). According to FDNY and Mt. Sinai between 40 to 45 percent of the responders in the monitoring program have been treated for WTC-related health conditions, with some individuals being treated for both physical and mental health problems.

The number of individuals in monitoring and treatment continues to grow as more responders have enrolled in the program, many of whom are sick as a result of their WTC exposures. It should be noted that these numbers do not include approximately 4,000 responders who live outside of the NY-NJ area who have also received screening or monitoring or the approximately 2,700 residents, area and clean-up workers who have received medical treatment for WTC-related health conditions through the WTC Environmental Health Center at the Bellevue Hospital. Nor do they include individuals who are not enrolled in existing programs or receiving treatment from other health care providers.

In November 2007, in a Congressional briefing on the WTC responder monitoring and treatment program, NIOSH estimated the cost of the responder medical monitoring and treatment program at approximately \$218 million for FY 2008. Of this amount, the estimated cost of treatment is \$149 million, the cost of monitoring is \$37.5 million, and the cost of program coordination, data collection and other support is \$32 million.

As more responders become sick, as is still the case, these costs will likely increase. Since many of the WTC-related health problems are chronic conditions, these individuals will need medical treatment for years to come. Moreover, due to the massive and complex exposures that occurred, there is concern that new conditions with longer latencies, including cancer, fibrosis and auto-immune diseases will also emerge.

The medical monitoring and treatment programs that have been established at the FDNY, Mt. Sinai Consortium and Bellevue Hospital have been vital for the thousands of workers and others who are now sick as a result of their exposures. But nearly seven years after the collapse of the World Trade Center towers, these efforts are still temporary and piecemeal; and there is no comprehensive permanent program to provide ongoing guaranteed medical monitoring to those who were exposed and medical treatment to responders, recovery and clean-up workers and members of the community who are suffering from WTC-related health problems.

### **The James Zadroga 9/11 Health and Compensation Act of 2008 (H.R. 6594)**

The 9/11 Health and Compensation Act of 2008 (H.R. 6594) would establish a comprehensive program to provide medical monitoring to those who have been exposed to WTC toxins and medical treatment and compensation to those who are sick. It would also fund ongoing research on WTC-related health conditions and reopen the Victim Compensation Fund (VCF) to provide compensation to those who have been harmed or suffered economic loss.

Specifically H.R. 6594 would amend the Public Health Service Act to establish the World Trade Center Health Program within the National Institute for Occupational Safety and Health, to be administered by the NIOSH director or his or her designee.

The legislation would establish a monitoring and treatment program for responders, a program for the community and a national program for those eligible individuals who reside outside the NY Metropolitan area.

The legislation builds on the successful monitoring and treatment programs that have been providing services to these populations. The responder program would be delivered through Clinical Centers of Excellence at the FDNY and the Mt. Sinai coordinated consortium, in which five medical institutions currently participate. The community program would be delivered through Clinical Centers of Excellence at the Bellevue Hospital. This delivery system will ensure that workers and community members are evaluated and treated by physicians who have expertise in diagnosing and treating World Trade Center related conditions, and will receive high quality care. Additional clinical centers and providers may be designated by the program administrator, providing they have the necessary expertise and meet other program requirements.

Steering committees of providers and representatives of the affected populations would be established to help guide and coordinate the responder and community programs.

Coordination of these clinical center programs is to be overseen by Coordinating Centers of Excellence at the FDNY, Mt. Sinai and Bellevue Hospital which will collect and analyze uniform data, develop medical monitoring and treatment protocols, coordinate outreach and oversee the steering committees for the responder and community health programs.

The bill sets forth eligibility criteria for inclusion in the program, which are based upon exposure to World Trade Center toxins and hazards, and are defined in geographic and temporal terms. For the responder program, the eligibility criteria are based upon work at the World Trade Center site and related disposal and support facilities. These criteria are based on those that have

been utilized in the existing WTC Medical Monitoring and Treatment Program for responders and have been approved by NIOSH. Responders who meet the eligibility criteria qualify for the medical monitoring program. As stated earlier, approximately 40,000 responders have received monitoring exams in the current program. Estimates of the total population of responders who may qualify range from 50,000 to 100,000 individuals.

Responders who are in the monitoring program are eligible for medical treatment, if an examining physician at a clinical center of excellence diagnoses a condition that is on the list of identified WTC-related health conditions included in the bill, and the physician determines that exposure to WTC toxins or hazards is substantially likely to be a significant factor in causing the condition. The list of conditions included in the bill is the same list utilized in the current responder monitoring and treatment program that has been approved by NIOSH.

Under the bill, the NIOSH Administrator is responsible for making final eligibility determinations and certifying individuals for participation in the monitoring program and their eligibility for medical treatment.

Recognizing that the scientific and medical evidence on WTC-related health problems continues to evolve, the bill provides for the addition of conditions to the list of identified WTC-related conditions, with the review and input of a Scientific and Technical Advisory Committee. It also provides for special independent expert medical review procedures for the consideration of medical treatment claims of individuals diagnosed with WTC-related conditions that are not yet on the list.

While we do not know the full extent of WTC-related disease among responders, we do know that in the current program approximately 40-45 percent of those in the monitoring



program have been treated for a WTC-related health condition, and the number of sick responders continues to increase.

For the community program, the bill also sets forth geographic and exposure criteria for defining the potential population that may be eligible for the program. The bill designates the geographic area covered by the bill as lower Manhattan South of Houston Street and the area in Brooklyn within a 1.5 miles radius of the World Trade Center site, and sets various time limits for residing, working or being present in the designated area. In addition the bill requires the WTC Program Administrator to develop and adopt more refined eligibility criteria within 90 days taking into account the period and intensity of exposures, based upon the best available evidence, in consultation with the Bellevue Hospital, the Community Steering Committee and affected populations.

For the community program, the bill includes provisions for making determinations of eligibility for medical treatment similar to those as for the responder program. The major difference in the programs is the expectation that the community program will not provide a comprehensive monitoring program but rather will focus on more limited screening and treatment of individuals with World Trade Center-related health conditions.

For those eligible responders, residents or non-responders who reside outside the NY metropolitan area, the bill directs the WTC Program Administrator to establish a national program with services to be provided by health care providers designated and approved by the administrator. These providers must have expertise and experience in treating the type of medical conditions included on the list of identified WTC-related conditions and agree to follow the established medical treatment and data collection protocols set forth in the bill.

## **Provisions to Address Program Costs**

The AFL-CIO recognizes that many in Congress are concerned about the costs associated with this legislation, particularly since the bill is structured as an entitlement to ensure ongoing funding for medical treatment for those who are sick as a result of World Trade Center exposures. Unfortunately due to the massive exposures that occurred and the failure to protect workers and residents, the health problems that have resulted are serious, persistent and extensive.

While we do not know the full extent of the health problems that have resulted or will result from WTC exposures, nearly seven years after the September 11 attacks, we do have substantial knowledge and experience, particularly concerning responder health problems and related treatment costs. As stated earlier, there are approximately 40,000 responders who have received monitoring and 18,000 individuals who have received medical treatment for WTC-related physical and/or mental health conditions. According to NIOSH, the current cost of WTC Responder Monitoring and Treatment Program is approximately \$218 million a year.

For the community program, there is less experience and less information since the WTC Environmental Health Program at the Bellevue Hospital was just initiated in 2006. To date, approximately 2,700 individuals have received medical treatment for World Trade Center-related health problems similar to those seen in the responder population. While the exposures of most residents and area and clean-up workers were not as great as responders who worked at the WTC site, many of these individuals had significant exposures and are suffering from serious health problems. Moreover, the number of individuals seen in the Bellevue program does not represent the full populations of those who are eligible or sick with WTC-related health conditions. In a

September 2007 report, “Addressing the Health Impacts of 9-11: Report and Recommendations to Mayor R. Bloomberg,” an expert panel of New York City officials estimated the potential costs of treatment for residents and area workers for 9/11 conditions at approximately \$200 million a year.

While the costs of WTC-related health problems will be large, the legislation includes a number of provisions to constrain these costs. First the program is limited to the Centers of Excellence or providers designated by the administrator who have experience with WTC-related health conditions. Eligible individuals must receive monitoring or treatment through these designated providers.

Evaluations of exposures and health conditions are to be made utilizing standardized questionnaires approved by NIOSH, and treatment provided according to medical protocols established by the program.

For conditions that are work-related, the medical treatment costs are offset by any workers’ compensation payments and the Centers of Excellence are required to assist eligible individuals to file for these and other available benefits. Unfortunately, since the city of New York and other employers continue to contest these claims, to date the workers’ compensation benefits for these conditions have been limited and delayed.

For those conditions that are not work-related and are covered by existing health insurance, the legislation designates the WTC treatment program as the secondary payor, with private or public insurance having the primary obligation to pay for treatment.

In addition, for individuals receiving treatment in the community program at Bellevue Hospital or other facilities of the Health and Hospitals Corporation, the city of New York is responsible for a 5 percent cost share of treatment costs.

But because the numbers of individuals who may be affected is indeed uncertain, the legislation imposes a mandatory cap on participation. For the responder program this cap is set at 35,000 additional responders to the number currently enrolled in the monitoring program, bringing the total program participation to approximately 75,000 responders. For responders this cap applies to the number of responders in monitoring, of which, based on current experience, approximately 40 - 45% or 30,000 to 34,000 individuals can be expected to require some type and level of medical treatment.

For the community program, the cap is also set at 35,000 participants in addition to the approximately 2,700 individuals who are currently enrolled in the Bellevue program. Because of the design of the Bellevue program, which only enrolls those with diagnosed WTC-related conditions, all of those certified as eligible for the community program are expected to receive medical treatment.

Because the geographic area for the community program has been limited and due to the uncertainty about the extent of exposures and disease, the bill provides for a contingent fund of \$20 million a year to provide medical treatment to residents and non-responders who are diagnosed with WTC-related conditions, but fall outside the scope of the bill's exposure and geographic eligibility criteria. For example, this contingent fund would be available to pay the cost of medical treatment for individuals diagnosed with WTC related conditions in New Jersey,

Staten Island and other locations in the NY metropolitan area who were exposed outside the geographical boundaries set in the bill.

In order to track the program's progress and experience, the legislation requires the WTC Program Administrator to provide an annual report to Congress setting forth the experience with claims, the nature of the diseases treated, the results of new research, program costs and other information. In addition, if and when 80 percent of the cap in either the responder or community program is reached, the administrator is required to notify Congress, so a determination can be made if further Congressional action should be taken.

**The Congress Should Act Now to Provide Ongoing Medical Treatment to Responders, Residents and Others who are Sick from World Trade Center Exposures and Enact the 9/11 Health and Compensation Act of 2008 (HR 6594)**

On September 11, 2001 and the days that followed tens of thousands of brave firefighters, police, emergency workers and construction workers answered the call when the nation was attacked. They toiled for days, weeks and months trying to save lives, recover victims and repair a broken city.

Now thousands of these workers and others are sick as a result of World Trade Center exposures, many are disabled and some have died. For the past several years, the federal government has provided monitoring and medical treatment for responders who are ill through a series of temporary short term funding measures. But many more who are ill have yet to receive the care they need, and there is no long term plan or funding to ensure that medical treatment will continue.

These brave responders have received the nation's gratitude but now they need the nation's help. The September 11 attacks were an attack on the nation and the federal

government has a moral obligation to assist those who responded just as it would assist others who have defended our country.

Seven years after the September 11 attacks it is time for the Congress to provide these responders and all who are sick as a result of the World Trade Center attacks the ongoing medical care and compensation they need and deserve. The AFL-CIO urges the Committee to move with all speed to support and favorably report the James Zadroga 9/11 Health and Compensation Act of 2008 (H.R. 6594) so that this long overdue measure can be enacted into law.

Thank you.